IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2007

C O R A M :

THE HONOURABLE MR.A.P.SHAH, THE CHIEF JUSTICE
AND
THE HONOURABLE MR. JUSTICE V.RAMASUBRAMANIAN

W.A.No.1116 of 2007 and
M.P.No.2 of 2007

1. The Union of India,
   rep. By the Chairman,
   Atomic Energy Commission,
   Anushakti Bhavan,
   Mumbai -39.

2. The Government of India,
   rep. By the Director,
   Department of Atomic Energy,
   Kalpakkam. Appellants/Respondents

vs.

E.Shanmugavelu Respondent/Petitioner

PRAYER : Writ Appeal filed under Clause 15 of the Letters Patent against the order of the learned single Judge dated 19.7.2006 in W.P.No.13059 of 1998 presented under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the Respondents to recruit the petitioner under land looser category who los his land for setting up the DAE Units by giving employment in the units in the available vacancy notified under circular No.40/97 dated 16.09.97.

For Appellants :: Mr.P.Wilson, Asst. Solicitor General
For respondent :: Ms.A.Arulmozhi

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JUDGMENT

(JUDGMENT OF THE COURT WAS DELIVERED
BY THE HONOURABLE THE CHIEF JUSTICE)

Admit. Ms.A.Arulmozhi, Learned counsel appearing for the respondent waives service. By consent, the appeal is taken up for final hearing.

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2. In or about 1968, the Government of India, Department of Atomic Energy proposed to set up the units of Department of Atomic Energy in Kalpakkam and nearly 300 acres of land was acquired for the purpose of of setting up seven DAE units at Kalpakkam. The General Service Organisation (GSO) is one of the units of Department of Atomic Energy. The main responsibility of the GSO is to provide common services like medical facilities, but transport, estate management which includes civil and electrical maintenance, autoshop, etc. The beneficiaries of these services are employees (and their families) of research and development units of the Department, viz., Bhabha Atomic Research Centre (BARC), Indira Gandhi Centre for Atomic Research (IGCAR), etc situated at Kalpakkam. The Government of India, Department of Atomic Energy has sanctioned some additional posts for the GSO with a view to provide adequate manpower to improve the services. With a view to fill up the posts in Group 'C', Group 'D', Auxiliary category, recruitment action was taken up in early 1997. In accordance with Government of India orders, these posts were notified to the District Employment Exchange at Kanchipuram for sponsorship of suitable candidates. Further, Circular No.20/97 dated 5.5.1997 was also issued inviting applications both from land-losers as well as from NMRs/HRs/Casual Labourers working in the GSO at Kalpakkam. The petitioner, who falls in the category of land-losers, applied for appointment to the post of 'Helper-B'. According to the petitioners, he has completed his X standard, which is the requisite qualification for the appointment in DAE according to Circular No.40/97 dated 16.9.1997. The petitioner was called for interview and the Selection Committee interviewed the petitioner along with other candidates and found him not suitable for the post of 'Helper-B'. Being aggrieved, the petitioner filed the writ petition seeking a mandamus to the respondents to recruit the petitioner under land-losers category, who lost their land for setting up the DAE units, in the available vacancy notified under Circular No.40/97 dated 16.9.1997. The petitioner has alleged that most of the youth belonging to the land-losers family are eligible for recruitment as Helpers, Drivers and Tradesman, etc. But, the management has been insensitive to the rights and plights of the local people who have been making representations for more than a decade. No candidate has been chosen by the respondents from the land-losers category. The respondents filed counter affidavit in which it was, inter alia, stated that the petitioner was called for interview for the post of 'Helper-B' in which due weightage was given as the petitioner falls under the category of land-losers, however, he did not qualify in the interview for the post he had applied and therefore, he could not be appointed. By the order under appeal, the learned single Judge ordered to the effect that the writ petitioner shall be given the post of 'Helper-B' in the next available vacancy and directed that without appointing the petitioner, no person for the said post shall be appointed. In such circumstances, being aggrieved by the order of the learned Single Judge, the Union of India and the Department of Atomic Energy have preferred the present appeal.

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3. Considering the respective submissions made by Mr.P.Wilson, Asst. Solicitor General appearing for the appellants and Ms.A.Arulmozhi, learned counsel appearing for the respondent, we are of the view that the learned single Judge has committed a serious error in directing the appellants to appoint the writ petitioner as 'Helper-B' in the next available vacancy and further directing not to fill up the said post without appointing the writ petitioner. There is no dispute that the family members of the persons whose lands have been acquired by the Department of Atomic Energy for setting up DAE units of the Department are eligible for being considered for appointment in the various categories mentioned in Circular No.40/97. In fact, it is seen from the affidavit filed on behalf of Union of India and the Department of Atomic Energy that the land-losers have been duly considered for employment by the units at Kalpakkam and the list of the candidates appointed from the land-losers category is found at annexure IV to the counter affidavit. The petitioner, who falls under the category of land-losers, has no vested right to claim an appointment to the post in question. The land-losers who fulfil the conditions pertaining to qualification and experience required for the post are liable to be considered and if they are found to be suitable, they are liable to be considered for appointment.

4. In the present case, the petitioner was interviewed by the Selection Committee which found him not suitable for the post. The posts which are notified by Circular No.40/97 are not exclusively made for the land-losers category, but also for other categories like NMRs/HRs/Casual Labourers who are working in various units at Kalpakkam and the candidates sponsored by the Employment Exchange are also liable to be considered along with the land-losers category.

5. Our attention was drawn to the judgment of the Supreme Court in PUNJAB STATE ELECTRICITY BOARD v. MALKIAT SINGH ((2005) 9 SCC 22). In that case, the appellant-Electricity Board had acquired large tracks of land for setting up of their project. The appellant, with a view to rehabilitate the displaced persons, who lost their lands because of the acquisition, by an office order, constituted a committee for providing employment on priority basis to one member of the each affected family whose land had been acquired and names of 277 persons including the respondent were recommended for appointment. Subsequently, the appellant-Board revised the policy considering that there was no justification to offer employment to those persons whose lands acquired were very nominal. It was decided that for giving benefit of employment on priority basis, the Chief Engineer (GHTP) should re-examine the proposal only of those land owners whose lands to the extent of 2 acres or more had been acquired. It was also decided that no relaxation as regards qualification or age be given in future. Pursuant to the amended policy, only three candidates were recommended for appointment and other pending cases were rejected. By the subsequent office order dated 1.7.1998, the appellant-Board decided to set up a homoeopathic dispensary at its Power Station for

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which a Class II post of Homoeopathic Physician was created. Pursuant to the said office order, the Chief Engineer addressed a letter to the District Employment Officer to send names of suitable candidates for the said post. When things stood thus, the respondent approached the High Court by filing a writ petition with a prayer to quash the letter dated 17.9.1998 and the revised policy decision dated 2.6.1998. Further, direction was sought to the appellant Board to appoint the respondent as a Homoeopathic Physician in the said dispensary. The High Court allowed the writ petition. By allowing the appeal, the Supreme Court held as follows: -

> "6. It is not disputed that neither homoeopathic dispensary at Lehra Mohabbat Power Station nor a post of Homoeopathic Physician was available on 18.7.1994. The decision to set up a homoeopathic dispensary at Lehra Mohabbat and to create a post of Homoeopathic Physician in the dispensary was taken only on 1.7.1998 long after the policy decision dated 18.7.1994 and subsequent to the change in the policy dated 15.5.1998 and 2.6.1998. This being the position, the question of the respondent seeking appointment to the said post pursuant to policy decision of 18.7.1994 itself did not arise. At any rate, there could be no vested right in him to claim the appointment to the said post. The High Court also committed an error in taking a view that the policy decision of 2-6-1998 could not have retrospective application to the disadvantage of the respondent. There is no question of applying the policy retrospectively. On 17.9.1998 when the names of suitable candidates were sought from the employment exchange pursuant to the decision of the Board dated 1.7.1998, it could not be said that the right of the respondent was taken away when he did not have any such vested right to get an appointment to Class II post of Homoeopathic Physician. It may also be added that the respondent was not eligible to claim appointment on priority basis having regard to the changed policy from 2-6-1998 inasmuch as the land acquired from him was less than 2 acres and he was also overage as on 17-9-1998. The revised policy made the position clear that there could be no relaxation in regard to qualification and the age-limit. Further, the scheme was devised on 18-7-1994 and subsequently it was revised only as a concession to give a helping hand as far as possible to rehabilitate the displaced families whose lands were acquired. The respondent has got compensation for his land which was acquired. The scheme giving appointment on priority basis was only in the nature of concession to eligible candidates which the respondent could not claim as a

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matter of right having taken compensation amount for his land which was acquired, more so when he did not fulfil the necessary requirements under the revised scheme. The High Court in the impugned order has observed that:

> "Obviously, if the effort of the respondent is to deny to the petitioner the job that he seeks in the present case on the ground that he is overage, action of the respondents cannot but be termed as discriminatory."

This observation is not based on proper foundation or facts. It is not a case where any mala fides is alleged against the appellant or its officers. There is nothing to show that anybody was bent upon denying the appointment to the respondent.

7. In the light of what is stated above, it is clear that the respondent was not entitled to appointment. The High Court was not right in directing the appellant Board to appoint the respondent to the post of Homoeopathic physician."

(emphasis supplied)

6. It is, thus, clear that the scheme framed by the respondents for giving priority to the land-losers category is only in the nature of concession to the eligible candidates which the writ petitioner cannot claim as a matter of right having already received compensation amount for his land which was acquired way back in 1968. Thus, the learned single Judge was not right in issuing a positive direction to the appellants Union of India and Department of Atomic Energy to appoint the petitioner to the post of 'Helper-B'. The Selection Committee has found the writ petitioner not suitable for the said post and therefore, it was not right to issue a mandatory direction to appoint the petitioner to the said post.

7. During the course of arguments, we asked the learned counsel appearing for the writ petitioner as to whether the petitioner would be willing to accept an appointment to the post of Office Assistant/Peon/Gardener and the learned counsel indicated that the petitioner would be willing to join in any of the post if offered by the appellants. Mr.Wilson, learned Assistant Solicitor General has stated that as and when vacancy in these categories arises, the petitioner will be considered for the said vacancy and, if found suitable, will be appointed on priority basis.

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8. In the circumstances, the order of the learned Single Judge is set aside. The writ appeal is disposed of.

Sd/
Asst.Registrar

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Sub Asst.Registrar

ssk/pv

TO

1. The Chairman,
   Atomic Energy Commission,
   Anushakti Bhavan,
   Mumbai -39.

2. The Director,
   Department of Atomic Energy,
   Kalpakkam.

1 cc To Mr.P.Wilson, Assistant Solicitor General, SR.64248.

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RVL 28.11.2007

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